

AISHA K. BROSAN (AB5986)  
BRODY, O'CONNOR & O'CONNOR, ESQS.  
Attorneys for Defendant  
7 Bayview Avenue  
Northport, New York 11768  
(631) 261-7778

WM 15-159 AB  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CHARLES MACK,

**Docket No.:**

Plaintiff,

-against-

**NOTICE OF REMOVAL**

WAL-MART STORES EAST, LP,

Defendant.  
-----X

**TO THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK:**

Defendant, WAL-MART STORES EAST, LP, for the removal of this action from the Supreme Court of the State of New York, County of QUEENS, to the United States District Court for the EASTERN District of New York, respectfully shows this Honorable Court:

FIRST: Defendant, WAL-MART STORES EAST, LP is a defendant in a Civil action brought against it in the Supreme Court of the State of New York, County of QUEENS, entitled:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
CHARLES MACK,

**Index No.: 2607/15**

Plaintiff,

-against-

WAL-MART STORES EAST, LP,

Defendant.  
-----X

Copies of the Summons, the Complaint, and WAL-MART STORES EAST, LP's Answer are annexed hereto as Exhibit A.

SECOND: That this action seeks recovery for damages sustained as a result of personal injuries allegedly suffered by the plaintiff while on the defendant's premises.

THIRD: The grounds for removal are that this Court has original jurisdiction pursuant to 28 § 1332(a)(1). The amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different States. Plaintiff verbally demanded \$4,000,000.00 to settle this claim.

FOURTH: The defendant, WAL-MART STORES EAST, LP, is a Delaware limited partnership with its corporate headquarters and principal place of business in Arkansas. WSE Investment, LLC, is the limited partner of WAL-MART STORES EAST, LP, and WSE Management, LLC is the General Partner. Both are Delaware companies with their principal places of business in Arkansas. The sole member of both limited liability companies is Wal-Mart Stores East, Inc. Wal-Mart Stores East, Inc. is a citizen of Arkansas. It is incorporated in Arkansas and its principal place of business is in Arkansas. Thus, for diversity purposes, the defendant is a citizen of Arkansas. See Carden v. Arkoma Assocs., 494 U.S. 185, 195-96, 110 S.Ct. 1015, 108 L.Ed.2d

157 (1990) (stating that, for purposes of diversity jurisdiction, limited partnerships have the citizenship of each of its general and limited partners); Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir.1998) (stating that, for purposes of diversity jurisdiction, a limited liability company has the citizenship of its members).

FIFTH: That upon information and belief Plaintiff is a citizen of the State of New York, County of QUEENS.

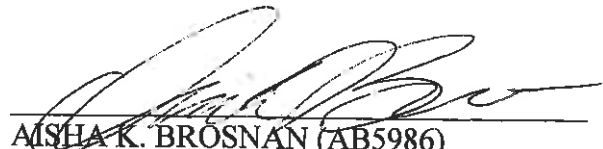
SIXTH: In that this action is between citizens of different states and seeks damages in excess of \$75,000.00, than pursuant to 28 U.S.C.A. § 1332 and 28 U.S.C.A. § 1441 and § 1446 the case should be removed from the Supreme Court of the State of New York, County of QUEENS to the United States District Court for the EASTERN District of New York.

Dated: Northport, New York  
July 27, 2015

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.  
Attorneys for Defendant

By:

  
AISHA K. BROSNAN (AB5986)  
7 Bayview Avenue  
Northport, New York 11768  
(631) 261-7778  
File No.: WM 15-159 AB

TO: DOMINICK W. LAVELLE  
Attorney for Plaintiff  
100 Herricks Road, Suite 201  
Mineola, New York 11501  
(516) 739-8111

# Exhibit



A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

CHARLES MACK,

Plaintiff,

-against-

Wal-Mart Stores East, LP

Defendant.

To the above named Defendant(s)

x Index No.: 2607/15  
: Date purchased: 3/4/15  
:  
: Plaintiff(s) designate(s)  
: QUEENS  
: County as the place of trial  
:  
: The basis of the venue is  
: Residence of Plaintiff  
:  
:

AMENDED SUMMONS

: Plaintiff resides at  
: 50-45 Newtown Road  
: Queens, New York  
:  
:  
:

x County of QUEENS

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 20, 2014

Dominick W. Lavelle  
Attorney(s) for Plaintiff

Defendant Address:

Office and Post Office Address  
100 Herricks Road  
Suite 201  
Mineola, New York 11501

Wal-Mart Stores East, LP  
c/o Brody, O'Connor & O'Connor, Esqs.  
7 Bayview Avenue  
Northport, New York 11768

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
CHARLES MACK, :  
 :  
 Plaintiff, : Index No.: 2607/15  
 :  
 -against- : Filing Date: 3/4/15  
 :  
 WAL-MART STORES EAST, LP : AMENDED  
 : VERIFIED COMPLAINT  
 :  
 Defendants. :  
-----X

Plaintiff, CHARLES MACK, by and through his attorney DOMINICK W. LAVELLE, ESQ, complaining of the defendants, hereby alleges as follows:

1. That at all times hereinafter mentioned, plaintiff CHARLES MACK was and is a resident of the County of Queens, State of New York, residing at 50-45 Newtown Road, Queens, New York.

2. That at all times hereinafter mentioned, and upon information and belief, defendant WAL-MART STORES EAST, LP was and is a duly organized domestic corporation or other business entity with an address of 266 Lyell Avenue, Rochester, New York 14608.

AS AND FOR A FIRST CAUSE OF ACTION  
(Negligence Against Defendant WAL-MART STORES EAST, LP)

3. Plaintiff repeats and realleges each of the allegations contained in paragraph "1" through "2" of the Complaint as if set forth herein at length.

4. Upon information and belief, and at all times hereinafter mentioned, defendant was the owner of a certain Walmart store 288 Larken, Monroe, New York 10950 (the "Premises").

5. Upon information and belief, and at all times hereinafter mentioned, defendant was the operator of the Premises.

6. Upon information and belief, and at all times hereinafter mentioned, defendant controlled the Premises.

7. Upon information and belief, and at all times hereinafter mentioned, defendant maintained the Premises.

8. Upon information and belief, and at all times hereinafter mentioned, defendant was the managing agent of the Premises.

9. That at all times hereinafter mentioned, the defendants, their employees, servants and agents, operated, controlled, maintained and managed the premises, it being the duty of the defendant, their employees, servants and agents to keep said premises in a safe and habitable condition, to be so constructed, equipped, operated and maintained so as to provide reasonable and

adequate protection to the lives, health and safety of all persons and tenants frequenting the Premises.

10. That on or about the 17th day of June, 2014, plaintiff CHARLES MACK was lawfully upon said premises as a customer.

11. That on or about the 17th day of June, 2014, while plaintiff was walking in the store, he slipped and fell on a slippery, wet waxed floor. There was no warning sign of any sort.

12. Plaintiff CHARLES MACK was caused to sustain severe injuries as a result of defendant's negligence, recklessness and wanton disregard in allowing the area where he was injured to be in a dangerous and unsafe condition.

13. Plaintiff's accident was due solely to the negligence, carelessness, recklessness and wanton disregard of the defendant in failing to maintain, prevent and correct the obviously dangerous conditions in the Premises; in permitting the wax to remain in a hazardous, and defective condition for a long period of time prior to plaintiff's accident; in failing to properly notify plaintiff of the dangers; in failing to inspect and clean the defective area before the accident occurred, by failing to provide a caution sign; in failing to rope off the dangerous condition and in sum creating and perpetuating the dangerous conditions which existed for a significant period of time that in the exercise of reasonable care



defendant knew or should have known of its existence and corrected it.

14. Defendant created the dangerous condition.

15. Defendant had notice or knowledge of the dangerous condition.

16. Defendant by the exercise of due care and concern, should have had knowledge of the dangerous condition for a long time prior to this accident.

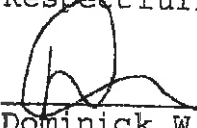
17. That by reason of the defendants' negligence, plaintiff has suffered serious injuries. The injuries are permanent and are the cause of great physical pain and mental anguish, present and future.

18. That the amount of damages alleged herein exceeds the jurisdictional limit of any other inferior court that would otherwise have jurisdiction over this matter.

WHEREFORE, the plaintiff, CHARLES MACK, demands judgment against defendant WAL-MART STORES EAST, LP for damages alleged herein in a sum that is both just and fair, the costs and disbursements of this action and such other and further relief this court deems just and proper.

Dated: Mineola, New York  
January 26, 2015

Respectfully submitted,



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Dominick W. Lavelle, Esq.  
Attorney for Plaintiff  
CHARLES MACK  
100 Herricks Road, Suite 201  
Mineola, New York 11501  
(516) 739-8111

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WM 15-159 PO  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
CHARLES MACK,

Plaintiff,

-against-

WAL-MART STORES EAST, LP,

Defendant.  
-----X

Index No.: 2607/15

**VERIFIED ANSWER  
TO AMENDED  
COMPLAINT**

The defendant, WAL-MART STORES EAST, LP, by its attorneys, BRODY, O'CONNOR & O'CONNOR, ESQS., answering the Amended Verified Complaint herein states upon information and belief:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "1", and each and every part thereof.

SECOND: Defendant denies the allegations set forth in paragraph marked "2", except admits that WAL-MART STORES EAST, LP is a foreign limited partnership registered to do and doing business in the State of New York.

**AS TO THE FIRST CAUSE OF ACTION**

THIRD: Defendant repeats and reiterates each and every denial in answer to paragraphs numbered "1" through "2", of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "3", and each and every part thereof.

FOURTH: Defendant denies the allegations set forth in paragraph marked "4", and each and every part thereof.

FIFTH: Defendant denies the allegations set forth in paragraphs marked “6”, and “7”, and respectfully refers all questions of law to the trial Court.

SIXTH: Defendant denies the allegations set forth in paragraph marked “8”, and each and every part thereof.

SEVENTH: Defendant denies the allegations set forth in paragraph marked “9”, and respectfully refers all questions of law to the trial Court.

EIGHTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked “10”, and “11”, and each and every part thereof.

NINTH: Defendant denies the allegations set forth in paragraphs marked “12”, and “13”, and each and every part thereof.

TENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked “14”, “15”, and “16”, and each and every part thereof.

ELEVENTH: Defendant denies the allegations set forth in paragraphs marked “17”, and “18”, and each and every part thereof.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

TWELFTH: The plaintiff was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to plaintiff, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiff bears to the culpable conduct and/or negligence which caused the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

THIRTEENTH: In the event that plaintiff recovers judgment against this answering defendant and it is determined that plaintiff's damages were caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

FOURTEENTH: Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.


WHEREFORE, defendant, WAL-MART STORES EAST, LP, requests judgment dismissing the Amended Complaint herein, together with costs and disbursements of this action.

Dated: Northport, New York  
April 29, 2015

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.  
Attorneys for Defendant

By:

  
\_\_\_\_\_  
PATRICIA A. O'CONNOR  
7 Bayview Avenue  
Northport, New York 11768  
(631) 261-7778  
File No.: WM 15-159 PO

TO: DOMINICK W. LAVELLE  
Attorney for Plaintiff  
100 Herricks Road, Suite 201  
Mineola, New York 11501  
(516) 739-8111

**AFFIRMATION BY ATTORNEY**

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

That affirmant is the attorney for the defendant in the within action; that affirmant has read the foregoing Verified Answer to Amended Complaint and knows the contents thereof; that the same is true to the affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters, affirmant believes it to be true.

Affirmant further says that the reason this Verification is made by deponent and not by the defendant is that defendant is a foreign limited partnership.

The grounds of belief as to all matters not stated upon deponent's knowledge are documents, correspondence and records maintained in your deponent's files and conversations and conferences had with the defendant.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Northport, New York  
April 29, 2015

  
\_\_\_\_\_  
PATRICIA A. O'CONNOR

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF SUFFOLK    )

DEBRA SANACORA, being duly sworn, deposes and says:

That your deponent is not a party to this action, is over 18 years of age and resides at Ronkonkoma, New York.

That on the 29 day of April, 2015, deponent served the within VERIFIED ANSWER and AFFIRMATION BY ATTORNEY

UPON:

DOMINICK W. LAVELLE  
Attorney for Plaintiff  
100 Herricks Road, Suite 201  
Mineola, New York 11501  
(516) 739-8111

The address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
DEBRA SANACORA

Sworn to before me this 29 day of April, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

PATRICIA A. O'CONNOR  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02006028806  
QUALIFIED IN SUFFOLK COUNTY  
COMMISSION EXPIRES ON 06/23/18

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF SUFFOLK    )

DEBRA SANACORA, being duly sworn, deposes and says:

That your deponent is not a party to this action, is over 18 years of age and resides at Ronkonkoma, New York.

That on the 28 day of July, 2015, deponent served the within NOTICE OF REMOVAL

UPON:

DOMINICK W. LAVELLE  
Attorney for Plaintiff  
100 Herricks Road, Suite 201  
Mineola, New York 11501  
(516) 739-8111

The address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
DEBRA SANACORA

Sworn to before me this  
28 day of July, 2015.

  
NOTARY PUBLIC

PEGGY MIKANDER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MI6174102  
Qualified in Suffolk County  
My Commission Expires September 10, 2015